

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LYNN C. CALER,

Defendant-Appellant.

UNPUBLISHED

August 4, 2000

No. 219528

Hillsdale Circuit Court

LC Nos. 98-228109 &

98-228113

Before: Murphy, P.J., and Kelly and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of criminal sexual conduct in the first degree (CSC I), MCL 750.520b(1)(b); MSA 28.788(2)(1)(b), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged in separate files with six counts of CSC I, the victim being his stepdaughter. Complainant testified, inter alia, to one incident of sexual penetration that occurred in the home during the year in which she was fourteen-years-old, i.e., September 13, 1995, through September 12, 1996, and to another incident that occurred in a barn during the summer of 1996. Defendant moved for a directed verdict of acquittal on the ground that plaintiff had not established a sufficiently specific time frame in which the charged incidents were alleged to have occurred. The trial court denied the motion. The jury convicted defendant of two counts of CSC I, and acquitted him of four counts.

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v McRurels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

If the evidence is insufficient to support a conviction, due process requires that the trial court direct a verdict of acquittal. MCR 6.419(A); *People v Lemmon*, 456 Mich 625, 633-634; 576

NW2d 129 (1998). When ruling on a motion for directed verdict, the trial court must consider the evidence presented by the prosecutor and determine whether a rational trier of fact could find that the elements of the charged offense were proven beyond a reasonable doubt. *People v Vincent*, 455 Mich 110, 121; 565 NW2d 629 (1997). Questions regarding the credibility of witnesses are to be left to the trier of fact. *People v Pena*, 224 Mich App 650, 659; 569 NW2d 871 (1997), modified in part on other grds 457 Mich 885; 586 NW2d 925 (1998). We review a trial court's ruling on a motion for directed verdict de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

Defendant argues that insufficient evidence was presented to support his conviction, and that the trial court erred by denying his motion for directed verdict, for the reason that the dates on which the sexual penetrations were alleged to have occurred were too vague to allow him to present a defense. We disagree and affirm. An information need only state the time of the offense "as near as may be." MCL 767.45(1)(b); MSA 28.985(1)(b). In criminal sexual conduct cases, especially those involving children, time is usually not of the essence or a material element of the offense. *People v Sabin*, 223 Mich App 530, 532; 566 NW2d 677 (1997). The dates of the offenses of which defendant was convicted were pinpointed with sufficient specificity. Defendant's position was that he did not engage in sexual penetration of complainant at any time. This was not a case in which defendant admitted some incidents but denied others. The failure to pinpoint exact dates did not result in prejudice to defendant. *Id.* The trial court did not err by denying defendant's motion for a directed verdict. *Vincent, supra*.

The undisputed evidence showed that complainant was between the ages of thirteen and sixteen, and resided in the same household with defendant at the time the charged conduct occurred. Complainant testified that defendant engaged in sexual penetration with her on a number of occasions, including the occasions that resulted in the charges of which he was convicted. No corroboration of complainant's testimony was required, MCL 750.520h; MSA 28.788(8), and the jury was entitled to believe the testimony. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). Viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's convictions. MCL 750.520b(1)(b); MSA 28.788(2)(1)(b); *Wolfe, supra*.

Affirmed.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Michael J. Talbot